



4510-29-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Exemptions from Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following: D-11710, **El Paso Corporation Retirement Savings Plan (the Plan)**, 2012-19; and L-11688, **Sharp HealthCare (Sharp)**, 2012-20.

SUPPLEMENTARY INFORMATION: The Department published notices in the Federal Register of the pendency of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in the applications for exemption and referred interested persons to the applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department.

In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemptions.

The notices of proposed exemptions were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011)¹ and based upon the entire record, the Department makes the following findings:

¹The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August

- (a) The exemptions are administratively feasible;
- (b) The exemptions are in the interests of the plans and their participants and beneficiaries; and
- (c) The exemptions are protective of the rights of the participants and beneficiaries of the plans.

El Paso Corporation Retirement Savings Plan (the Plan)

Located in Houston, Texas

[Prohibited Transaction Exemption **2012-19**;

Exemption Application No. **D-11710**]

EXEMPTION

Section I: Transactions

The restrictions of sections 406(a)(1)(A), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and 4975(c)(1)(E) of the Code,² shall not apply, in connection with a merger transaction (the Merger) between El Paso Corporation (El Paso) and Kinder Morgan, Inc. (KMI):

(a) To the acquisition by the individually directed accounts of the participants of the Plan (the Invested Participants) of certain publicly traded warrants (the Warrants) issued by KMI, which became a party in interest with respect to the Plan after the merger (the Merger); and

²For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

(b) To the holding of the Warrants by the accounts in the Plan of the Invested Participants; provided that the conditions, as set forth in Section II of this exemption, were satisfied at the time of the acquisition of the Warrants by the accounts in the Plan of such Invested Participants and throughout the duration of the holding of the Warrants in the accounts of such Invested Participants.

Section II: Conditions

The relief provided in this exemption is conditioned upon adherence to the material facts and representations described, herein, and as set forth in the application file and upon compliance with the conditions, as set forth in this exemption.

(a) The Warrants were acquired by the individually-directed accounts of the Invested Participants, all or a portion of whose accounts in the Plan hold the common stock of El Paso (the EP Stock);

(b) The exchange by the shareholders, including the Invested Participants, of the EP Stock for Warrants resulted from an independent act of El Paso and KMI, as corporate entities in connection with the Merger, and occurred automatically without any action or control on the part of such shareholders, including the Invested Participants;

(c) The acquisition of the Warrants by the Invested Participants occurred in connection with the Merger, and such Warrants were made available on the same terms to all shareholders of the EP Stock, including the Invested Participants;

(d) The decisions with regard to the holding and disposition of the Warrants were made by each of the Invested Participants in accordance with the provisions under the Plan for individually-directed accounts;

(e) The Warrants allocated to the accounts of the Invested Participants in the Plan may be exercised or sold at any time by such Invested Participants giving investment directions in accordance with the provisions of the Plan;

(f) The Invested Participants did not pay any fees or commissions in connection with the acquisition and holding of the Warrants, nor did the Invested Participants pay any fees on the exercise of the Warrants; and

(g) Prior to entering into the Merger, El Paso obtained all necessary approvals from any relevant state agencies and federal agencies, including, but not limited to the U.S. Department of Justice Antitrust Division, the Federal Energy Regulatory Commission, the Securities and Exchange Commission, and the Federal Trade Commission.

EFFECTIVE DATE: This exemption is effective, May 25, 2012, the closing date of the Merger.

WRITTEN COMMENTS

In the Notice, the Department invited all interested persons to submit written comments and requests for a hearing within sixty (60) days of the date of the publication of the Notice in the FEDERAL REGISTER on June 1, 2012. All comments and requests for hearing were due by July 31, 2012. During the comment period, the Department received no requests for hearing. However, the Department did receive a comment in a letter, dated July 5, 2012, from James E. Street (Mr. Street), Vice President, Human Resources and IT of KMI. As of the date of the Merger, KMI became an interested person with respect to the Plan.

In his letter, Mr. Street informed the Department that the Merger was effective on May 25, 2012. Accordingly, Mr. Street represents that the subject transactions were entered into on the effective date of the Merger for business expediency reasons before a final exemption could be obtained from the Department. As the subject transactions have already been consummated, Mr. Street, on behalf of KMI, requests that the Department grant a retroactive exemption, effective as of May 25, 2012, the date

when the Merger closed.

The Department concurs, and accordingly, the final exemption has been amended to change the tense of the verbs to reflect that the subject transactions have been entered into, and to insert the following paragraph:

EFFECTIVE DATE: This exemption is effective, May 25, 2012, the closing date of the Merger.

In response to an inquiry by the Department, Mr. Street, on behalf of KMI, in a letter dated September 25, 2012, confirmed that, to the best of his knowledge and belief, the material facts presented and the representations made by El Paso in the original prohibited transaction exemption application (the Application) submitted to the Department on November 23, 2011, and in the supplemental submissions relating to the Application remain true and correct and that the conditions set forth in Section II of the Notice, as published in the FEDERAL REGISTER on June 1, 2012, were satisfied, as of May 25, 2012, the closing date of the Merger of El Paso and KMI, and thereafter.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice of Proposed Exemption which

was published on June 1, 2012, at 77 FR 32692.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. Le Blanc of the Department, telephone (202) 693-8540. (This is not a toll-free number.)

Sharp HealthCare (Sharp)

Located in San Diego, California

[Prohibited Transaction Exemption **2012-20**;

Exemption Application No. **L-11688**]

EXEMPTION

SECTION I. COVERED TRANSACTIONS

A. The restrictions of sections 406(a)(1)(A), 406(a)(1)(D), 406(b)(1), and 406(b)(2) of the Act shall not apply, effective August 1, 2006 through and until [insert the date prior to the date of publication of this exemption in the Federal Register], to the purchase of health insurance by the Sharp HealthCare Health and Dental Plan (the Plan) from the Sharp Health Plan (the HMO), provided that the conditions of Section II have been met.

B. The restrictions of sections 406(a)(1)(A), 406(a)(1)(D), 406(b)(1), and 406(b)(2) of the Act shall not apply, effective as of [insert the date of publication of this exemption in the Federal Register], to the purchase of health insurance by the Plan from the HMO, provided that the conditions of Section II and Section III are met.

SECTION II. GENERAL CONDITIONS

(a) Sharp is the sole member of the HMO, and more than 50%

of the appointment power for the HMO's Board of Directors is held by Sharp.

(b) Sharp is licensed to sell HMO coverage in the State of California.

(c) The HMO is certified by the California Department of Managed Health Care as being in compliance with the requirements for a licensed HMO within the last 18 months.

(d) The HMO has undergone a financial examination by the California Department of Managed Health Care within the past 5 years and will continue to undergo such financial examinations at least once every five years.

(e) The HMO has been, and will continue to be, examined by an independent certified public accountant annually.

(f) The amount the Plan pays to Sharp for HMO coverage is reasonable and does not exceed the amount the Plan would have paid for similar services in an arm's length transaction between unrelated parties.

(g) All HMO-offered health care providers meet all applicable licensure requirements and certifications.

(h) The HMO offers a sufficient number of non-Sharp affiliated health care providers to effectively allow Plan participants the opportunity to receive health care services from either Sharp or non-Sharp affiliated health care providers.

(i) No commissions are paid by the Plan with respect to the sale of HMO coverage.

(j)(i) With respect to the relief provided in section I. A., for each taxable year of the HMO, the gross premiums received in that taxable year by the HMO from the Plan did not exceed 50% of the gross premiums received by the HMO for all HMO coverage issued in that taxable year; or (ii) with respect to the relief provided in section I. B., for each taxable year of the HMO, the gross premiums received in that taxable year by the HMO from the Plan will not exceed 50% of the gross premiums received by the HMO for all HMO coverage issued in that taxable year.

(k) Sharp maintains or causes to be maintained for a period of six years from the date of any covered transaction hereunder such records as are necessary to enable the persons described in paragraph (l)(i) below to determine whether the conditions of this exemption have been met, provided that (i) a separate prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Sharp, the records are lost or destroyed prior to the end of the six-year period, and (ii) no party in interest other than Sharp shall be subject to a civil penalty that may be assessed under section 502(i) of the Act, if such records are not maintained, or are not available for examination as required by paragraph (l)(i) below.

(1)(i) Except as provided below in paragraph (1)(ii), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to above in paragraph (k) are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department,

(B) Any duly authorized representative of the California Department of Managed Health Care or any State or Federal governmental body responsible for regulatory oversight of Sharp or the HMO, and

(C) Any fiduciary of the Plan or the Plan's authorized representative; and

(ii) None of the persons described above in paragraph (1)(i)(C) shall be authorized to examine trade secrets of Sharp, or commercial or financial information which is privileged or confidential, and should Sharp refuse to disclose information on the basis that such information is exempt from disclosure, Sharp shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

SECTION III. PROSPECTIVE CONDITIONS

(a) Sharp retains annually the services of an independent third-party consultant to determine whether the amount employees and/or their dependents pay for coverage is reasonable and does not exceed the amount that would be paid for similar services in an arm's length transaction between unrelated parties, which amount includes the cost of co-payments and other out-of-pocket expenses for such coverage borne by participants and/or their dependents, and written copies of such determination are distributed to Plan participants along with summaries of health care costs for similar, competing health care providers.

(b) The Board of Directors of Sharp appoints a committee (the Plan Committee) consisting of the Senior Vice President and General Counsel, the Senior Vice President and Chief Financial Officer, and the Vice President, Compensation and Benefits, and such other representatives as the Board of Directors may deem appropriate. The Plan Committee will annually ascertain and certify in writing that the above requirements of this exemption continue to be met.

SECTION IV. EFFECTIVE DATES

Section I.A. of this exemption is effective as of August 1, 2006, through and until [insert the date prior to the date of

publication of this exemption in the Federal Register], and Section I.B. of this exemption is effective as of [insert the date of publication of this exemption in the Federal Register].

The Department invited all interested persons to submit written comments with respect to the proposed exemption on or before September 30, 2012. During the comment period, the Department received one e-mail inquiry which generally concerned the individual's difficulty in understanding the notice of proposed exemption. However, the Department received no comments or requests for a hearing from interested persons.

Therefore, after giving full consideration to the entire record, the Department has decided to grant the exemption. For further information regarding the individual exemption, interested persons are encouraged to obtain copies of the exemption application file (Application No. L-11688) that the Department maintains with respect to the individual exemption. The complete application file, as well as supplemental submissions received by the Department, is made available for public inspection in the Public Documents room of the Employee Benefits Security Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, D.C. 20210.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the proposed exemption published in the Federal Register on August 28, 2012 at 77 FR 52061.

FOR FURTHER INFORMATION CONTACT: Mr. Warren Blinder, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693-8553. (This is not a toll-free number.)

GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Each exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of an exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 9th day of November,
2012.

Lyssa E. Hall

Director of Exemption Determinations
Employee Benefits Security
Administration
U.S. DEPARTMENT OF LABOR

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